

Exhibit 9

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1 **COURTROOM ADMINISTRATOR:** Off record?

2 **THE COURT:** Off record.

3 *(Recess at 11:29 a.m., until 11:36 a.m.)*

4 **THE COURT:** Mr. Engel, are you ready now, sir?

5 **THE DEFENDANT:** Yes, Your Honor.

6 **MR. MARKOWITZ:** Thank you, Your Honor.

7 **THE DEFENDANT:** Good morning, Your Honor.

8 **THE COURT:** Good morning.

9 **THE DEFENDANT:** I want to thank my attorney,
10 Mr. Markowitz, for what he's done. But may I continue where I
11 feel that he may have left off concerning the PSR?

12 **THE COURT:** Yes.

13 **THE DEFENDANT:** There's some issues here that I would
14 like to address with you.

15 Your Honor, concerning line 76 and the mitigating
16 factor, during the course of separating the three tiers, that
17 was approximately six weeks before my trial commenced. I
18 would imagine at that point that the Government would have had
19 the entirety of the inculpatory evidence against me; yet, in
20 their motion separating us the tiers, they state --

21 **THE COURT:** Let me clarify. Are you asking to argue
22 or just to provide information in --

23 **THE DEFENDANT:** Well, I would like to argue --

24 **THE COURT:** -- allocution and mitigation of
25 sentencing?

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1 **THE DEFENDANT:** I would like to argue. Yes, Your
2 Honor.

3 **THE COURT:** All right. Well, that's what your
4 attorney is for, and he's -- he's done actually a very good
5 job of representing you and --

6 **THE DEFENDANT:** Okay.

7 **THE COURT:** So I've already made those determinations
8 based on his argument. But this is your opportunity to tell
9 me anything else that you think I should know --

10 **THE DEFENDANT:** Okay.

11 **THE COURT:** -- in determining what your sentence
12 should be. The new range is now 135 to 168 based on the fact
13 that I am not adding the four levels for the loss amount.

14 **THE DEFENDANT:** When we -- when you read off the --
15 I'm not arguing because I know you're not going to change --
16 but read off the different things, the planning, all the
17 different things, as you well know, I didn't have any
18 planning. I didn't know any of the Bundies prior to this.
19 Did I have a leading role in it? No. And I think the
20 Government knew that when they stated in a motion as they
21 separated us that our group was the least culpable. Not just
22 less culpable. They say the least culpable. And they knew
23 that. And that's why they took us to trial. But as you well
24 know, Your Honor, I didn't -- there's no evidence that I had
25 anything to do with the Bundies or conspiracy or planning or

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1 was a leading role in this -- in this thing. So I just wanted
2 to address that on mitigating role.

3 On the victim-related adjustments in 3A1.2(c)(1), on
4 line 75, Your Honor, I was indicted for assault on a federal
5 officer. I was not found guilty of assault on a federal
6 officer. The jury was hung on that. Yet, when you read down
7 to the fourth line, on line 75, it says on the third line,
8 "Knowing or having reasonable cause to believe that a person
9 was a law enforcement officer" -- which I knew they were law
10 enforcement officers -- "assaulted such officer during the
11 course of the offense or the immediate flight thereof."

12 Your Honor, I faced that charge in trial, assault on
13 a federal officer, and I was not convicted of that. And now
14 the PSR wants to give me six points for assault on an officer.
15 I don't understand how that can be possible that I am now
16 being sentenced for assault on an officer when I wasn't found
17 guilty of assault on an officer, Your Honor.

18 Your Honor, on line 74, brandishing a firearm is
19 almost exactly like a 924(c). And what this does when -- when
20 you add the five-point enhancement of brandishing or
21 possessing a firearm, it takes -- it adds 89 months to my
22 sentence from -- remove 89 months from the 210 is where I
23 would be with this five-points. But had I been convicted of a
24 924(c), Your Honor, I would have had a minimum mandatory of 84
25 months. So they've effectively added five extra months over

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1 and above what I would have received had I been convicted of a
2 924(c). I've been through the guidelines a million different
3 directions, and possessing a firearm usually brings a two to
4 three-level enhancement. There's possession, there's use,
5 there's brandishing, and possession is usually the lowest one.
6 I would have preferred to have been convicted of a 924(c) than
7 to receive this five-points adding an extra five months over
8 and above a 924(c). I don't understand how that can happen,
9 Your Honor. I just don't.

10 Your Honor, in interstate travel and aid of
11 extortion, it says in line 71, pursuant to 2E1.2(a)(2), that
12 2B3.2 is referenced. When you look at the guidelines,
13 Your Honor, 2'12 is the guideline for interstate travel and
14 aid of extortion. It would have been appropriate to use in
15 this case, and then they take me and they reference 2B3.2,
16 Your Honor, which is the guideline that is used to sentence
17 people that were convicted of 1951, actual extortion.
18 Your Honor, I wasn't convicted of extortion which is 2B3.2. I
19 was convicted of -- of interstate travel and aid of extortion,
20 which is 2E1.2. I know they have their different directions
21 that they go to get me over there. I just don't know how you
22 get me over there when I'm -- 2E1.2 is the appropriate
23 guideline. And if you can't use that, then why -- Your Honor,
24 why does it exist? Why does -- why does 2E1.2 exist if
25 anybody who's a -- convicted of interstate travel and aid of

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1 extortion immediately gets taken to actual extortion and is
2 sentenced off of that guideline?

3 And under, Your Honor, 2B3.2, we have everything
4 else. Everything comes underneath that, and that's why
5 they -- they wanted to take me there.

6 Your Honor, if you'll look at 2B3.2 and read it -- I
7 don't have it in front of me. I apologize. But it talks
8 about threatening and -- and fear and intimidation and all
9 these things that add up to that 18 points as the -- as the
10 base level. But when we come down, Your Honor, to seven --
11 line 72, 2B3.2(b)(1), Your Honor, we're -- it states it's
12 involved in express or implied threat of death, bodily injury,
13 or kidnapping. But those -- that wording, Your Honor, is
14 encompassed in the 18-points under 2B3.2 if -- if you are to
15 use that still. It's in the 2B3.2 in the initial 18 points;
16 yet, they're doubling down and using another two-point
17 enhancement of implied threat of death or bodily injury. And
18 once again, Your Honor, I faced a jury, and I was indicted
19 with threatening a federal officer with bodily injury and all
20 these things. I was indicted and I faced them with
21 threatening death and all this stuff, and the jury did not
22 find me guilty of that, Your Honor. Yet here they're adding
23 two more points for the very thing I was not found guilty of.
24 Your Honor, I understand that had I not --

25 **THE COURT:** The burden of proof at trial is beyond a

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1 reasonable doubt.

2 **THE DEFENDANT:** Yes, Your Honor.

3 **THE COURT:** The burden of proof for the sentencing
4 factors is preponderance of the evidence.

5 **THE DEFENDANT:** Um-hum, I understand.

6 **THE COURT:** So it's a different standard, and the
7 jury did not acquit you, which means some people thought you
8 did and some people thought you didn't. They just couldn't
9 decide. Just -- I mean, you keep asking me you can't -- you
10 don't understand, you don't understand. I'm not able to
11 provide you legal advice and information to the extent that I
12 think you might need. Your attorney can and probably has
13 already to quite a degree and has a much better grasp of this
14 obviously than you do right now. And I don't mean to
15 disrespect you by saying that, but maybe keep that in mind.
16 That might help for you to understand why, when you compare
17 what the jury did or didn't do and what's happening now at
18 sentencing, there are two different burdens that apply.

19 **THE DEFENDANT:** I understand, Your Honor.

20 **THE COURT:** Hope that at least helps a little bit for
21 you to understand.

22 I think it's a big part of sentencing and of the
23 sentence itself for people to be able to understand what
24 happened and why so they can move on and have some closure and
25 feel that they were treated fairly by society, by the courts,

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1 by law enforcement, by everyone, so that we can have a more
2 harmonious community the way that the constitution hoped that
3 we would be able to govern ourselves. So that's why I try to
4 explain to you -- and you know throughout trial I did
5 sometimes, too, try to explain to you so that you would
6 understand a little better what's going on and feel more
7 comfortable with the process because I -- I feel more than
8 just that you don't understand but that you were sometimes
9 very angry about what was being done and felt that you were
10 being treated very unfairly.

11 But tell me what -- what should I consider in
12 determining your guideline -- or rather your sentence right
13 now with the guideline range of 135 to 168?

14 **THE DEFENDANT:** Well, Your Honor, if -- if you were
15 to determine interstate travel off of 2E1.2, that's a
16 six-point base level. But I understand that that wouldn't
17 apply because you have to go to that next -- the highest one
18 as your -- as your base level, which would be obstruction of
19 justice, which is 12 points. So that would remove six points
20 right there, Your Honor, from the base level. And then, from
21 there, the other enhancements of, you know, threatening a
22 federal officer and assault on an officer, those would be
23 reduced. And branding -- like I say, brandishing a firearm,
24 Your Honor, is just -- it's so over and above what I would
25 have received had I been convicted of a 924(c), Your Honor.

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1 I made some serious mistakes here. It's obvious. I
2 went down there, Your Honor, for -- for good intentions, but I
3 let my -- myself get away from me. When everything was
4 happening, it was easy, Your Honor, to get caught up in the --
5 in the emotion, the hype of it all. I'm not going to sit here
6 and make excuses to who wrote what on Facebook. I know who
7 posted what, and I know who didn't. But I'll take
8 responsibility for all of them.

9 When I got down there on the bridge, Your Honor, and
10 I saw what was going on, you've seen the video. I moved away.
11 I went -- I moved away fast, and I found the first law
12 enforcement officer I could to help me try to stop what was
13 going on. I know my Facebook posts are ridiculous and I
14 shouldn't have never wrote those, and I'm sorry for it.

15 Your Honor, if any law enforcement officers who were
16 there down in that wash that day were here and I effected them
17 in any way, I would apologize to them. I meant no harm to
18 those guys. That's why I went the opposite direction,
19 Your Honor. I didn't want to be seen harmful to them.

20 **THE COURT:** You wish now that you didn't seem harmful
21 to them, or you don't think at the time that you wanted to be
22 harmful? Because --

23 **THE DEFENDANT:** No.

24 **THE COURT:** -- here's -- I'll -- this is really,
25 really disturbing. I'm 20 miles from Ruby Ridge, truck

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1 loaded, heading to Nevada. Pray for peace, prepare for war.
2 I'll be boots on the ground at 4:00 a.m. I'm ready to go to
3 Nevada. I want to plow through all of the BLM's barricades
4 and set fire to them. Reminds me of Ruby Ridge and Waco. Are
5 there fed roadblocks. I'll be there in five hours. I won't
6 take kindly to an illegal search.

7 I know you weren't on drugs, but it almost sounds
8 like this manic, crazy, emotional --

9 **THE DEFENDANT:** Your Honor --

10 **THE COURT:** So -- so are we talking -- are you -- are
11 you backtracking and telling me now that you didn't mean --
12 you never meant to -- to have any forceful appearance or are
13 you telling me now that you wish you hadn't acted the way that
14 you did and realize that you got swept up in something that
15 was going to end up wrong 99 percent of the time and by the
16 grace of God didn't that one day?

17 **THE DEFENDANT:** Your Honor, I didn't --

18 **THE COURT:** I'm not trying to put words in your
19 mouth, but --

20 **THE DEFENDANT:** No, and --

21 **THE COURT:** -- if you want to be convincing, you
22 aren't going down the right road.

23 **THE DEFENDANT:** Well, that's why I didn't want to
24 make excuses for my Facebook posts, Your Honor.

25 **THE COURT:** Okay.

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1 **THE DEFENDANT:** But since you've brought it up,
2 during the course of traveling there, I had a friend with me.
3 During the course of -- of being on the bridge, he was sitting
4 in my truck charging my phone the entire time because it was
5 dead. And then he would bring it over to me, and we would
6 take some pictures. And it would die, and he would take it
7 back.

8 I take full responsibility of everything that's on
9 there, but I'm here to tell you, Your Honor, I didn't post
10 every single one of those. And a couple of those are tags
11 that I didn't post at all. The one about burning barricades
12 and all of that, Your Honor, is a tag from somebody else onto
13 my Facebook that these gentlemen just read to you as though I
14 wrote them and I didn't.

15 I take responsibility, Your Honor, for everything
16 after the fact of driving there, being there. When we went
17 home, the one that's embellishing about everything that
18 happened, yes, I wrote that. But during the course of it, I
19 was driving, my friend sat in my truck, he had access to it,
20 I'm not going to make excuses because I have to own this, but
21 I want you to know that since you've just brought it up to me.

22 Obviously behind us, Your Honor, there was not 150
23 gunmen; okay? So who -- we know there was 40 people in the
24 entire place, and there was nobody behind us. How would I
25 text 150 behind us? That would put them down over the side of

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1 the bridge behind where they couldn't see anything. He was
2 sitting in my truck.

3 I didn't want to make excuses for this. I want to
4 own what happened here. But, Your Honor, these gentlemen also
5 have brought up -- the Government's also brought up now you're
6 a refuge. I went there. They didn't say anything disparaging
7 about me being there because I went there to talk Ammon Bundy
8 into hopefully leaving that place before anybody got hurt.
9 Ammon Bundy would be able to tell you that. I spent 45
10 minutes with him in a room literally begging him to leave
11 before anybody got hurt, and I was unsuccessful. And now we
12 have one man that's been killed

13 **THE COURT:** So paragraph 58 of the PSR has the post
14 that's a video posted January 13, 2016, in which you state the
15 Feds should back down from the Malheur National Wildlife
16 Refuge, and you express displeasure that Ammon Bundy, leader
17 of the occupation, chose a tactically poor plan for a
18 confrontation with the Government. And you say, "So what now?
19 We have to come to your aid with rifles because you can't
20 handle it."

21 **THE DEFENDANT:** And, Your Honor, nobody went to his
22 aid. There was requests. There was screams for the militia
23 to go there. I went there, but I didn't go there with a gun.
24 I went there to ask him to please leave before somebody got
25 hurt. So once again, I'm posting stuff on Facebook, but my

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1 actions are different. My actions are I went there to help.
2 I post stuff on Facebook, Your Honor, and my actions at the
3 Bundy Ranch show that, as soon as I saw law enforcement, I
4 went the other way and talked to the highway patrol to please
5 help us to keep this calm. My Facebook posts are ridiculous,
6 but my actions, Your Honor, are not violent. They're not
7 assaultive. They're not threatening. You've seen the video.
8 You saw me go the opposite direction. You saw me with Nevada
9 Highway Patrol for over an hour. You have that gentleman on
10 the -- on the -- testifying and he said in your courtroom I
11 was helpful. He said I was helpful. You saw him pat us on
12 the back as we were leaving and smiling. How, Your Honor, was
13 I standing next to a law enforcement officer for an hour and
14 20 minutes while I assaulted federal officers, threatened them
15 with death, and was extorting people when I was 200 yards away
16 from them standing with a sergeant of the Nevada Highway
17 Patrol? If my Facebook posts and all that grandiose didn't
18 exist, I wouldn't be here for any of them. If my Facebook
19 didn't exist, would I have ever been arrested? It's doubtful,
20 Your Honor.

21 Sergeant Serena said I was helpful to him. He patted
22 me on the back as I left. I went to the Malheur refuge not
23 with a rifle, not with the militia. I went there to talk
24 Ammon Bundy to leave before somebody got hurt because we knew
25 that the FBI was going to ultimately move on them and we were

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1 begging them to please leave.

2 My actions, Your Honor, are much different than
3 Facebook posts. I've spent almost two and a half years in
4 prison, Your Honor, and I know that my attorney is asking for
5 time served. I don't think you're going to do that, but
6 something substantial less than sending me to -- away till I'm
7 70 years old. Your Honor, Greg Burleson, he had 57 years for
8 three minimum mandatories. But then he was convicted of -- by
9 a jury of assault, threatening, extortion, interstate travel
10 and aid of extortion, and obstruction of justice; five charges
11 in which he received an additional 11 years. And I'm here
12 before you with the two -- according to you, the least charges
13 of obstruction and interstate travel, and I'm facing almost 18
14 years for two of them. I'm begging you, Your Honor, to -- to
15 not do that to me. I'm here to tell you I'm -- whatever you
16 do and whenever I get out, I'll never be a part of -- of this
17 anymore. I've tried to do the right thing, and -- and like
18 they say, no good deed goes unpunished. And I tried to get
19 everything to calm down out there that day in that wash, and
20 I'm about to get sentenced to who knows what. I posted the
21 wrong thing on Facebook, but I went to the Malheur refuge for
22 the right intentions and now that's being held against me.

23 Your Honor, I'm -- I'm at your mercy, but it's not me
24 that has suffered here as bad as it is my family. I fear that
25 if you send me away, I won't be there for my mom's funeral or

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1 my dad's. Your Honor, I plead mercy on the Court. That's all
2 I can do. Not just mercy for me but mercy for my mom and my
3 sister who this has literally tortured. And that I'm sorry
4 for it and I'm sorry for causing you grief during the trial.

5 **THE COURT:** Is that your sister with the white shirt
6 in the front? Which one is sister? Okay. So there's quite a
7 few folks that I see here that were here for the entirety of
8 this; day in, day out, day in, day out.

9 **THE DEFENDANT:** I don't know what else to say to you,
10 Your Honor, other than I'm -- I'm -- I apologize for -- if I
11 scared any BLM officers, I would apologize to them. I just --

12 **THE COURT:** If you scared? You still think that you
13 didn't scare them, that they're lying?

14 **THE DEFENDANT:** No, no, no. I don't know --
15 Your Honor, I was so far away from them, I wouldn't see them
16 hardly at all. I don't know how they could see me. That's --
17 that's the point. I -- I was --

18 **THE COURT:** You were here for the testimony.

19 **THE DEFENDANT:** But, Your Honor, there was not one
20 BLM officer that ever described me from the bench, ever seen
21 me or saying he saw me dressed in any type of clothing. I
22 don't know how he could. I was so far down the opposite end
23 of the freeway, I don't know how he could see me. In fact,
24 Your Honor, I was so far away when Agent Simkins put his
25 overview up there with all the dots, I was the dot with the

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1 gun the furthest away than any other dot in that whole entire
2 day. So I don't know how I threatened or assaulted anybody or
3 extorted anybody being the furthest away from the entire wash
4 and the BLM agents, standing with a law enforcement officer
5 with a weapon -- they used this picture of me, Your Honor,
6 kneeling down. Mr. Markowitz is right. I was in front of
7 a -- of the car and you don't see it but the Nevada Highway
8 Patrol is 10 feet away from me standing right there. It's --
9 you can see it on the video. Was I in the low ready position,
10 Your Honor? Two months before that, Your Honor, I had a
11 double spinal fusion. I had my disk cut out of my back, and I
12 have a cage in there now. And I had that in my hand. I
13 wasn't even released from the doctor. I had been standing
14 there for an hour, and I had to take a knee and get the weight
15 off my brand-new double spinal fusion. I'm not in the low
16 ready position. Everybody else is standing around having
17 conversations because we couldn't see all the way down there
18 the Bureau of Land Management hardly at all. So there was no
19 threat from them to us. We were so far away. I don't know
20 how I could have been threatening to a BLM officer at that
21 distance.

22 I was the first dot on Agent Simkins' map. There was
23 how many people with rifles in the wash right up against the
24 fence? Your Honor, how many other people testified or do you
25 know of that worked with law enforcement to try to calm the

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1 situation down? There wasn't anybody. I'm the only one. The
2 only one out of 400 people that day that was begging a highway
3 patrolman to please help calm the situation down and how to do
4 that, to get the BLM to please stop pointing rifles at the
5 people because it was causing the people to point rifles back.
6 And I didn't want it to escalate. That's why I'm yelling at
7 everybody to stand down, please stand down. I don't know how
8 much further I could have gone away. If I would have gone
9 away any further from the protest, I wouldn't have been on
10 Agent Simkins' map of dots. That's why I say I don't know how
11 I threatened them. Not one of them described me from the
12 stand. Not one of them ever described me in one of their
13 reports, they 302s or MOAs. Nobody does. The only person
14 that describes me is the two highway patrol officers who said
15 I was helpful in their MOAs, was very cooperative.

16 I posted stuff on Facebook, and it's going to put me
17 in prison. I didn't post all of that, but I'll take
18 responsibility because I have to. I'm not one to make
19 excuses.

20 Your Honor, my life's in your hands. I don't know
21 what else to say.

22 **THE COURT:** Thank you, Mr. Engel.

23 Does the probation office have anything to add?

24 **PROBATION OFFICER:** No, Your Honor. Thank you.

25 **THE COURT:** And does the Government have any victims

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1 who wish to be heard?

2 **MR. SCHIESS:** Your Honor, we rely upon the victim
3 statements that are in the presentence report.

4 **THE COURT:** The Court has heard the statements of
5 counsel for the Government, counsel for the defense, and the
6 defendant's statements. I've read the presentence report
7 submitted by the probation office, and I do find that the
8 calculation is correct with the exception of the four level
9 amount of loss added to the base offense level. So I do find
10 that the appropriate total offense level is a 33, which
11 provides a guideline range of 135 to 168. Is that right,
12 Officer?

13 **PROBATION OFFICER:** That's correct, Your Honor.

14 **THE COURT:** All right. And the Court has already
15 considered the factors set forth in Title 18 of the United
16 States Code Section 3553(a). It's clear to me that Mr. Engel
17 is still in denial and still doesn't understand or maybe
18 doesn't wish to understand, wants to manipulate the
19 information, what he's heard and what he believes to be true.
20 I'm not sure how much of it is -- is an act and how much of it
21 is just that he's so deep in this rhetoric that he can't see
22 the difference between reality and a persecution that he feels
23 and that he's the only person out of 400 people there who was
24 trying to calm everybody down. It's a very dangerous thing.
25 Perhaps that's what the jury saw when they convicted you and

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1 chose not to convict the others and only you and Mr. Burleson.
2 I hope that you use this time not to dig deeper into this
3 feeling of being treated unfairly but that you start to
4 realize the pain that you really did cause and that there are
5 people that you did really effect in a very real way;
6 individuals who don't get paid all that much and spend a lot
7 of time defending the community to keep the peace, who really
8 are trying to keep the peace as their job, and they sacrifice
9 to do that every day. And they were faced with a situation
10 unlike anything that anyone has ever seen here in terms of
11 being face-to-face with the reality of death. So many of them
12 called their family to say I don't know if I'm coming home
13 tonight, this might be it. And even afterwards struggling
14 with that fear and that constant reminder and trying to get
15 over it and finding that they can't and that they still have
16 there -- trying to play with their kids and instead they're
17 making Legos and they're still thinking about the situation
18 and they go up to perform just a very routine stop, a traffic
19 stop, and they think that they've got it all together and they
20 hear their voice trembling.

21 I know you were here. You've seen the videos. I
22 know you've read transcript. It doesn't seem to sink in, and
23 those -- I'm not a therapist. So there's not very much that I
24 can really say or do, so I'm just kind of wasting everybody's
25 time, I'm afraid. But I think that's what it comes down to,

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1 though, is that you're still in denial, and it's still a very
2 dangerous thing.

3 So, Mr. Engel, if you'll please stand. You're hereby
4 committed to the Bureau of Prisons for Count 12 a term of 120
5 months, for Count 16, 168 months concurrent to each other.
6 And this is the sentence that the Court does find to be
7 sufficient but not more than necessary to comply with the
8 purposes of sentencing. There will be no fine due to your
9 financial condition. I understand that you're -- it states in
10 the probation office that your home and your land and all of
11 your assets were sold off to your sister, so you don't have
12 any financial income to pay for a fine. So the fine is
13 waived.

14 And restitution will be determined at a later date
15 after I can be provided with the information. I do find that
16 it is reasonable and necessary to give the Government an
17 opportunity because there wasn't any prior notice that the
18 restitution affidavit would be questioned or objected to. So
19 I think it is fair to give the Government that opportunity.
20 They can submit either a redacted form, if they want to file
21 it publicly or they can just submit an *in camera* evidence of
22 the -- either the -- oh, what is it? The time sheets or
23 whatever information that they want the Court to consider,
24 they should be made available to Mr. Markowitz as well. He
25 can come to your office and look at it, or if you want to give

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1 him a redacted copy. You can figure that out.

2 But there's also a mandatory penalty assessment of
3 \$100 per count. There's two counts. So that's a 200-dollar
4 total amount that is due immediately.

5 And supervised release is imposed for a term of three
6 years per count concurrent. I am imposing the standard as
7 well as the mandatory conditions of supervised release and the
8 following three special conditions:

9 No. 1, you must participate in an outpatient
10 substance abuse treatment program and follow the rules and
11 regulations of that program and the probation office will
12 supervise your participation in the program regarding the
13 provider, location, modality, duration, intensity. And you
14 must pay the cost of the program.

15 No. 2, you must not communicate or otherwise interact
16 with any co-conspirators either directly or through someone
17 else without first obtaining the permission of the probation
18 officer.

19 And No. 3, you shall submit to the search of your
20 person, your property, your residence -- this is the wrong
21 one. Do you have the new one, Aaron?

22 **COURTROOM ADMINISTRATOR:** I do, Your Honor. I'm
23 pulling it up now.

24 **THE COURT:** I have a copy printed up because this
25 happens so often. We've got new language, and it doesn't

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1 always make its way on to the...

2 I don't have a copy. Do you have it? All right.

3 Thank you.

4 You must submit your person, property, house,
5 residence, vehicle, papers, computers as defined in Title 18
6 United States Code Section 1030(e)(1), other electronic
7 communications or data storage devices or media or office to a
8 search conducted by the United States probation officer.
9 Failure to submit to the search may be grounds for revocation
10 of release, and you must warn any other occupants that your
11 premises may be subject to search pursuant to this condition.
12 And the probation officer may conduct a search under this
13 condition only when reasonable suspicion exists that you have
14 violated a condition of supervision and that the areas to be
15 searched contain evidence of this violation. Any search must
16 be conducted at a reasonable time and in a reasonable manner.

17 Do you have a copy of those conditions --

18 **PROBATION OFFICER:** I do, Your Honor.

19 **THE COURT:** -- to provide to the defendant?

20 All right. So those are the conditions being
21 provided to you. If for any reason you lose that document
22 before you're released, you can go to any federal probation
23 office to receive a new copy. And if you have any questions
24 or concerns about those conditions, you can ask for
25 modifications to be made. The probation office does have some

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1 discretion to make modifications on their own. Otherwise, if
2 they don't, then a motion has to be filed with the Court, and
3 then the Court will have to determine whether or not the
4 modification requested is appropriate.

5 Let's see. You do -- this is for your appeal. I'm
6 advising you now that you do have only 14 days to file a
7 notice of appeal, if you would like to do so. If you cannot
8 afford an attorney, the Court will appoint one for you free of
9 charge. If you cannot afford a copy of the court transcript,
10 one will be prepared for you at the Government's expense. You
11 just need to let the Court know.

12 Was there any forfeiture being sought today?

13 **MR. SCHIESS:** No, Your Honor.

14 **THE COURT:** I know there was originally.

15 **MR. SCHIESS:** No, Your Honor.

16 **THE COURT:** But not anymore? All right.

17 And Mr. Markowitz, do you have a recommendation for a
18 particular facility or geographical region for Mr. Engel to
19 serve his sentence? I'm not guaranteeing he'll be placed
20 there, but I will place on the Judgment of Conviction a
21 recommendation. And it's my understanding the Bureau of
22 Prisons, if he qualifies, tries to comply with that
23 recommendation.

24 **MR. MARKOWITZ:** May I have a moment, Your Honor?

25 **THE COURT:** Of course.

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1 **MR. MARKOWITZ:** Your Honor, for convenience sake,
2 since I intend to continue to represent Mr. Engel in his
3 appeal, so we will notify the Court through the direct process
4 with the docket as well as the records that we will be
5 appealing the conviction, we're asking the Court to place him
6 in either Arizona or California, some place accessible to me
7 and in the grand scheme of things easily gotten to by his
8 family. So we're going to leave that up to the Court and the
9 Bureau of Prisons, but California or Arizona would be
10 appropriate.

11 **THE COURT:** All right. And so California's really
12 big --

13 **MR. MARKOWITZ:** Southern California.

14 **THE COURT:** -- so anywhere in California or --

15 **MR. MARKOWITZ:** No. Southern California, Your Honor.
16 Thank you.

17 **THE COURT:** I just wanted to make sure. All right.
18 So I will place that in the Judgment of Conviction that I do
19 recommend that he be placed, if possible, in a facility in
20 either Southern California or Arizona so he can remain close
21 to his attorney who will be representing him for --

22 **MR. MARKOWITZ:** I have one more question for the
23 Court.

24 **THE COURT:** Yes.

25 **MR. MARKOWITZ:** Will he be granted any credit for the

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1 time he's already served?

2 **THE COURT:** That's up to the Bureau of Prisons, but I
3 have no reason to believe that he would not be receiving
4 credit for the time that he's already served because he only
5 served the time for this case. Sometimes people are in
6 custody for a state court case and not for, you know, the case
7 here in Federal Court. So then they start off with zero time.

8 **MR. MARKOWITZ:** Understood.

9 **THE COURT:** But he doesn't have any other cases. He
10 only has this case. So all the time that he's serving I
11 believe is for this case. If I'm wrong -- that's -- the
12 Bureau of Prisons looks at everything else, and they're the
13 ones who make that determination. If you think that their
14 calculation is incorrect, there is an administrative process
15 for appealing those calculations. But the Court doesn't --
16 doesn't have anything to do with that.

17 **MR. MARKOWITZ:** Understood, Your Honor. Thank you.

18 **THE COURT:** But I hope that eases your mind at least
19 is I think there's no reason why he wouldn't be receiving
20 time. I don't know the calculation for good time credits, if
21 there's some extra time because he's at the Pahrump jail
22 instead of a prison facility and whether or not he's lost
23 because of any infractions. That's why the Bureau of Prisons
24 handles all of that.

25 All right. Now, we do need to set -- I was thinking

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1 maybe 30 days. I don't know how much time because it's summer
2 and people are taking vacations. Mr. Schiess, how much time
3 it would take for you to obtain the information that you need
4 to provide the Court --

5 **MR. SCHIESS:** Your Honor --

6 **THE COURT:** -- to --

7 **MR. SCHIESS:** -- may I ask 45 days, please.

8 **THE COURT:** Forty-five days?

9 **MR. SCHIESS:** Yes, ma'am.

10 **MR. MARKOWITZ:** May I ask where that falls on the
11 calendar?

12 **THE COURT:** Yes. Aaron's going to pull that up for
13 us and tell us what day of the week and what time.

14 **COURTROOM ADMINISTRATOR:** Your Honor, that would be
15 the first week of September, and I'm looking at Wednesday,
16 September 5, 2018, at 9:00 a.m.

17 **THE COURT:** All right. so are you available,
18 Mr. Markowitz, on Wednesday, September 5, at 9:00 a.m.?

19 **MR. MARKOWITZ:** With all due respect, Your Honor, I
20 have a funny feeling I'm going to be in Syracuse. My
21 daughter's going to college.

22 **THE COURT:** Oh.

23 **MR. MARKOWITZ:** I think I'm dropping her off that
24 week. So I -- may I inform the Court within the next couple
25 of days? Would that be acceptable?

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1 **THE COURT:** We'll go ahead and set it now for
2 Wednesday, September 5 at 9:00 a.m., and then the parties can
3 get together and see if you find a different time that's more
4 convenient. And then please contact my courtroom deputy to
5 see what the Court's availability is so you can just file a
6 stipulation for a new date if you need to.

7 **MR. MARKOWITZ:** Thank you.

8 **MR. SCHIESS:** Thank you.

9 **THE COURT:** Anything else, Aaron, or anything else
10 the probation office needs me to clarify?

11 **PROBATION OFFICER:** A clarification, Your Honor.
12 Going back to the beginning of our hearing, we talked about
13 the Facebook posts and whether or not to incorporate a
14 sentence --

15 **THE COURT:** Right.

16 **PROBATION OFFICER:** -- determined that.

17 **THE COURT:** So I did order that the term sniper be
18 removed from paragraph 42 and 54. I was satisfied with the
19 posts made in paragraph 45, and as to the posts made in
20 paragraph 48 through 55, I think the dispute that remained was
21 paragraph 50. So I will order you to add to that paragraph at
22 the end that the defendant disputes making that post; although
23 he sort of later said he would take responsibility for it.
24 But I think it's fair to say that he disputes actually making
25 the post whether or not he adopts it or takes responsibility

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1 for it. So that was just as to paragraph 50 was the only one
2 that was -- did not have sufficient evidence to support that
3 statement without more.

4 And then the other -- does that answer your question?

5 **PROBATION OFFICER:** Yes, Your Honor. Thank you.

6 **THE COURT:** Okay. All right. Anything else, Aaron,
7 that you need?

8 **COURTROOM ADMINISTRATOR:** No, Your Honor.

9 **THE COURT:** All right. Then we'll be in recess. Off
10 record.

11 **COURTROOM ADMINISTRATOR:** Off record.

12 *(Proceedings adjourned at 12:21 p.m.)*

13 * * *

14 I, AMBER M. McCLANE, court-appointed transcriber, certify
15 that the foregoing is a correct transcript transcribed from
16 the official electronic sound recording of the proceedings in
17 the above-entitled matter.

18
19 /s/ Amber M. McClane
20 Amber M. McClane, CCR 914

9/28/2018
Date